



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 08 2007

CERTIFIED MAIL NO. 7006 0100 0006 2455 2635
RETURN RECEIPT REQUESTED
IN REPLY: AIR-5
Docket No.: R9-07-04

Edward Forst
President
Sun State Builders, Inc.
1150 W. Washington Street
Tempe, AZ 85281

RE: Construction Projects Located in Maricopa County, AZ

Dear Mr. Forst:

Enclosed is a Finding and Notice of Violation ("NOV") issued pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (the "Act"). The NOV sets forth facts demonstrating that the operation of Sun State Builders, Inc. ("Sun State") projects located throughout Maricopa County, Arizona, violates Regulation III, Rule 310 of the federally approved State Implementation Plan ("SIP") for the Maricopa County Air Quality Department.

You should be aware that Section 113(a) of the Act provides that any time after expiration of 30 days following the issuance of this NOV, EPA may issue an Order requiring compliance with the requirements of the SIP, issue an Order assessing a civil administrative penalty, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, Section 113(c) of the Act provides for criminal penalties in certain cases.

Upon a finding of adequate evidence of a continuing violation, EPA may place Sun State on the List of Violating Facilities. See Section 306 of the Act and the regulations promulgated in 40 C.F.R. Part 32. Such facility would be declared ineligible for participation in any federal contract, grant, or loan, or subagreement thereunder.

If you wish to discuss the NOV or EPA's future enforcement intentions, you may request a conference with EPA. The conference will afford Sun State an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance. Relevant factors might include:

- 1) any information demonstrating that you relied on compliance assistance provided by the EPA or state agencies prior to receiving this NOV;
- 2) misidentification of the proper party;
- 3) financial factors bearing on your ability to pay a civil penalty;
- 4) other information on which you based a reasonable belief that Sun State's activities were in compliance with the applicable law.

This information will be taken into account by EPA in any penalty or other enforcement proceeding. Even if you are unaware of any such information, we are extending to you the opportunity to commence discussions concerning the above-described violations.

Please have your attorney contact David Kim, Office of Regional Counsel, at (415) 972-3882, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 working days after receipt of this letter. You may also contact John Brock, Air Enforcement Office, at (415) 972-3999.

Sincerely,


for Deborah Jordan
Director, Air Division

Enclosures

cc: Robert Kard, MCAQD



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 08 2007

IN REPLY: AIR-5

REFER TO: Docket No.: R9-07-04

Robert Kard, Director
Maricopa County Air Quality Department
1001 N. Central Avenue
Phoenix, AZ 85004

RE: Sun State Builders, Inc. Notice and Finding of Violation

Dear Mr. Kard:

Enclosed for your information is a copy of a Finding and Notice of Violation issued to Sun State Builders, Inc. ("Sun State"). Sun State is the owner of a construction company operating in Maricopa County, Arizona.

Sun State violated Regulation III, Rule 310 of the federally approved State Implementation Plan for Maricopa County. The NOV has been issued pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, which provides in part:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.

The NOV informs Sun State that a conference on the matter may be arranged by making a request to this office within 10 working days after receipt of the NOV. If such a conference is held, you will be advised and your participation would be welcome.

If you have any questions concerning this matter, please contact David Kim, Office of Regional Counsel at (415) 972-3882, or John Brock of the Air Enforcement Office at (415) 972-3999.

Sincerely,

for 
Deborah Jordan
Director, Air Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of:)	
)	
Sun State Builders, Inc.,)	Docket No. R9-07-04
)	
Proceeding under Section 113(a),)	FINDING AND
Clean Air Act, as Amended)	NOTICE OF VIOLATION
_____)	

This Finding and Notice of Violation ("NOV") is issued pursuant to section 113(a)(1) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(1), to Sun State Builders, Inc. ("Sun State") for violations of the Act at its projects located throughout Maricopa County, Arizona.

The authority of the Administrator of the United States Environmental Protection Agency ("EPA") to issue this NOV pursuant to section 113(a)(1) of the Act has been delegated to the Regional Administrator of EPA Region 9, and redelegated to the Director, Air Division, EPA Region 9.

STATUTORY AND REGULATORY AUTHORITY

1. The Administrator of EPA, pursuant to authority under section 109 of the Act, 42 U.S.C. § 7409, promulgated the National Ambient Air Quality Standards ("NAAQS") for certain criteria air pollutants. 40 C.F.R. §§ 50.9, 50.10.
2. Pursuant to section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for the Arizona AQCRs

are listed at 40 C.F.R. § 81.303.

3. Sun State engages in residential construction projects throughout Maricopa County, Arizona. These projects are subject to the jurisdiction of the Maricopa County Air Quality Department ("MCAQD" or the "Department"). EPA has designated Maricopa County as a serious nonattainment area for the NAAQS for particulate matter. See 40 C.F.R. § 81.303.
4. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of primary and secondary NAAQS in the State. Upon approval by EPA, the plan becomes part of the "applicable implementation plan" (or "SIP") for the State. Pursuant to section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA may enforce violations of the SIP.
5. MCAQD Regulation 1, Rule 2 was approved into and made a part of the federally enforceable SIP pursuant to 42 U.S.C. § 7410 on August 17, 1982.¹
6. MCAQD Regulation 3, Rule 310 was approved into and made a part of the federally enforceable SIP pursuant to 42 U.S.C. § 7410 on August 6, 2002.²
7. Section 81 of MCAQD Rule 2 defines "source" as "any facility, equipment, machine, incinerator, structure, building, device or other article (or combination thereof) which is located on one or more contiguous properties and which is owned or operated by the same person (or by persons under common control) and which emits or may emit an air

¹47 Fed. Reg. 26382 (June 18, 1982).

²67 Fed. Reg. 48718 (July 25, 2002). See also 62 Fed. Reg. 41856 (Aug. 4, 1997) (previous version of Rule 310 was incorporated into SIP on September 20, 1997).

pollutant.”

8. Section 71 of MCAQD Rule 2 defines “pollutant” as “an air contaminant the emission or ambient concentration of which is regulated pursuant to these rules and regulations.”
9. Section 7 of MCAQD Rule 2 defines “air contaminants” to include “smoke, vapors, chemical, paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist, aerosols, aerosol droplets, odors, particulate matter, windborne matter, radioactive materials, noxious chemicals, or any other material in the outdoor atmosphere.”
10. Section 69 of MCAQD Rule 2 defines “person” as “any public or private corporation, company, partnership, firm, association or society of persons, the Federal Government and any of its departments or agencies, the State and any of its agencies, departments or political subdivisions, as well as a natural person.”
11. Section 102 of MCAQD Rule 310 provides that “[t]he provisions of this rule shall apply to all dust generating operations except: normal farm cultural practices . . . and open areas, vacant lots, unpaved parking lots, and unpaved roadways which are not located at sources that require any permit under these rules.”
12. Section 208 of MCAQD Rule 310 defines “dust generating operation” as “any activity capable of generating fugitive dust, including but not limited to, land clearing, earthmoving, weed abatement by discing or blading, excavating, construction, demolition, material handling, storage and/or transporting operations, vehicle use and movement, the operation of any outdoor equipment, or unpaved parking lots. . . .”
13. Section 210 of MCAQD Rule 310 defines “earthmoving operation” as “[t]he use of any equipment for an activity which may generate fugitive dust, such as but not limited to,

cutting and filling, grading, leveling, excavating, trenching, loading or unloading of bulk materials, demolishing, blasting, drilling, adding to or removing bulk materials from open storage piles, back filling, soil mulching, landfill operations, or weed abatement by discing or blading.”

14. Section 201 of MCAQD Rule 310 defines “bulk material” as “[a]ny material, including but not limited to, earth, rock, silt, sediment, sand, gravel, soil, fill, aggregate less than 2 inches in length or diameter (i.e, aggregate base course (ABC)), dirt, mud, demolition debris, cotton, trash, cinders, pumice, saw dust, feeds, grains, fertilizers, and dry concrete, which are capable of producing fugitive dust at an industrial, institutional, commercial, governmental, construction, and/or demolition site.”
15. Section 221 of MCAQD Rule 310 defines “owner and/or operator” as “[a]ny person who owns, leases, operates, controls, or supervises a dust generating operation subject to the requirements of this rule.”
16. Section 203 of MCAQD Rule 310 defines “carry-out/trackout” as “[a]ny and all bulk materials that adhere to and agglomerate on the exterior surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that have fallen onto a paved public roadway.”
17. Section 226 of MCAQD Rule 310 defines “trackout control device” as a “gravel pad, grizzly, wheel wash system, or a paved area, located at the point of intersection of an unpaved area and a paved roadway, that controls or prevents vehicular trackout.”
18. Section 213 of MCAQD Rule 310 defines “gravel pad” as “a layer of washed gravel, rock, or crushed rock which is at least one inch or larger in diameter, maintained at the

- point of intersection of a paved public roadway and a work site entrance to dislodge mud, dirt, and/or debris from the tires of motor vehicles and/or haul trucks, prior to leaving the work site."
19. Section 214 of MCAQD Rule 310 defines "grizzly" as "a device (i.e., rails, pipes, or grates) used to dislodge mud, dirt, and/or debris from the tires and undercarriages of motor vehicles and/or haul trucks prior to leaving the work site."
 20. Section 235 of MCAQD Rule 310 defines "work site" as "[a]ny property upon which any dust generating operations and/or earthmoving operations occur."
 21. Section 308.3(a) of MCAQD Rule 310 provides that the owner and/or operator of a source engaged in spillage, carry-out, erosion, and/or trackout activities must "[i]nstall a suitable trackout control device (Examples of trackout control devices are described in Table 1 (Trackout-1J, 2J, 3J) of this rule) that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse such work site at all exits onto a paved public roadway: (1) From all work sites with a disturbed surface area of five acres or larger. . . ."
 22. Table 1 of MCAQD Rule 310 lists the following trackout control devices as acceptable: "1J - Install a grizzly or wheel wash system at all access points. 2J - At all access points, install a gravel pad at least 30 feet wide, 50 feet long, and 6 inches deep. 3J - Pave starting from the point of intersection with a paved public roadway and extending for a centerline distance of at least 100 feet and a width of at least 20 feet."
 23. Section 308.3(b) of MCAQD Rule 310 provides that the owner and/or operator of a source engaged in spillage, carry-out, erosion, and/or trackout activities must "[c]leanup

spillage, carry-out, erosion, and/or trackout on the following time schedule: (1)

Immediately, when spillage, carry-out, and/or trackout extends a cumulative distance of 50 linear feet or more. . . .”

24. Section 308.7 of MCAQD Rule 310 provides that the owner and/or operator of a source conducting earthmoving operations on a disturbed surface area of one acre or larger must operate water application system (e.g., water truck) if water is the chosen control measure.

FINDINGS OF FACT

25. Sun State engages in commercial and residential construction projects throughout Maricopa County, Arizona.
26. At all times relevant to this notice, Sun State engaged in commercial and residential construction projects (individually the “Project”; collectively the “Projects”) at the following locations in Maricopa County, Arizona: (1) 1151 North Fiesta Boulevard, Gilbert; (2) Country Club Drive and Southern Avenue, Mesa; (3) 39th Avenue and Washington Street, Phoenix; (4) 1838 W. Parkside Lane, Phoenix; and (5) Elliot Road and Kyrene Road, Tempe.
27. The Projects each involve importation, export, excavation, and/or storage of sand, soil, gravel, and other bulk materials as that term is defined in section 201 of MCAQD Rule 310.
28. The Projects are “sources” as that term is defined in section 81 of MCAQD Rule 2.
29. The Projects are each a “dust generating operation” as that term is defined in section 200 of MCAQD Rule 310.

30. The Projects are each an "earthmoving operation" as that term is defined in section 210 of MCAQD Rule 310.
31. Sun State is a "person" as that term is defined in section 69 of MCAQD Rule 2.
32. Sun State is an "owner and/or operator" as that term is defined in section 221 of MCAQD Rule 310.
33. On or about October 26, 2004, January 12, July 29, and December 12, 2005, and March 22 and 31, 2006, inspectors from MCAQD inspected the Projects.
34. During their inspections of the Projects, the MCAQD inspectors observed that the Projects involved importation, export, excavation, and/or storage of sand, soil, gravel, and other bulk materials.
35. During their inspections of the Projects, the MCAQD inspectors observed that the Projects involved earthmoving operations that equal or exceed 0.10 acre.
36. During their inspections of the Projects, the MCAQD inspectors observed that the Projects contained a disturbed surface area of one acre or larger.
37. During her inspection of the Project at 1151 North Fiesta Boulevard, Gilbert, on or about October 26, 2004, a MCAQD inspector observed that Sun State failed to operate a water application system (e.g., water truck) while conducting earthmoving operations on disturbed surface areas larger than one acre even though Sun State had chosen water as the primary control measure in its dust control plan for the Project.
38. On or about October 28, 2004, MCAQD issued a notice of violation to Sun State, citing its failure to operate a water application system while conducting earthmoving operations on disturbed surface areas larger than one acre.

39. During an inspection of the Project located at 39th Avenue and Washington Street, Phoenix, on or about July 29, 2005, and an inspection of the Project located at Elliot Road and Kyrene Road, Tempe, on or about December 12, 2005, MCAQD inspectors observed that the Projects contained a disturbed surface area of five acres or larger and that Sun State failed to install any suitable trackout control device at the entrances/exits to the Projects to control and prevent trackout and/or particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the Projects.
40. On or about July 29 and December 12, 2005, MCAQD issued notices of violation to Sun State, citing its failure to install suitable trackout control devices, as required by the MCAQD rules.
41. During an inspection of the Project located at Country Club Drive and Southern Avenue, Mesa, on or about January 12, 2005; an inspection of the Project located at Elliot Road and Kyrene Road, Tempe, on or about December 12, 2005; and inspections of the Project located at 1838 W. Parkside Lane, Phoenix, on or about March 22 and 31, 2006, MCAQD inspectors observed trackout that extended more than 50 linear feet from the entrances/exits to the Projects.
42. During an inspection of the Project located at Country Club Drive and Southern Avenue, Mesa, on or about January 12, 2005; an inspection of the Project located at Elliot Road and Kyrene Road, Tempe, on or about December 12, 2005; and inspections of the Project located at 1838 W. Parkside Lane, Phoenix, on or about March 22 and 31, 2006, MCAQD inspectors observed that Sun State failed to immediately clean up the trackout described above.

43. On or about January 12 and December 12, 2005 and March 22 and 31, 2006, MCAQD issued notices of violation and/or notices to correct to Sun State, citing its failure to immediately clean up trackout extending more than 50 linear feet, as required by the MCAQD rules.

FINDINGS OF VIOLATION

44. On or about October 26, 2004, Sun State violated section 308.7 of MCAQD Rule 310 by failing to operate a water application system while conducting earthmoving operations on disturbed surface areas larger than one acre at its Project located at 1151 North Fiesta Boulevard, Gilbert.
45. On or about July 29 and December 12, 2005, Sun State violated section 308.3(a)(1) of MCAQD Rule 310 by failing to install suitable trackout control devices at the entrances/exits to its Projects located at 39th Avenue and Washington Street, Phoenix and Elliot Road and Kyrene Road, Tempe.
46. On or about January 12 and December 12, 2005 and March 22 and 31, 2006, Sun State violated section 308.3(b)(1) of MCAQD Rule 310 by failing to clean up trackout extending more than 50 linear feet from the entrances/exits to its Projects located at Country Club Drive and Southern Avenue, Mesa; Elliot Road and Kyrene Road, Tempe; and 1838 W. Parkside Lane, Phoenix.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, EPA may, without regard to the period of violation,

- issue an order requiring compliance with the requirements of the SIP or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$32,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$32,500 per day for each violation.

42 U.S.C. § 7413(a)(1), as amended by Pub. L. No. 104-34. Furthermore, for any person who knowingly violates any SIP or permit requirement more than 30 days after the date of the issuance of the NOV, section 113(c) provides for criminal penalties or imprisonment, or both.

In addition, under section 306(a), the regulations promulgated thereunder (40 C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the subject facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or a court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith attempts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

Section 113(e)(2) of the Act allows the Administrator or a court to assess a penalty for

each day of violation. For the purpose of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, EPA shall presume the days of violation to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

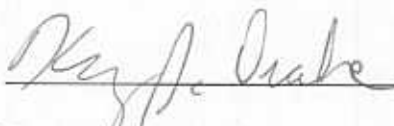
OPPORTUNITY FOR CONFERENCE

Sun State may, upon request, confer with EPA. The conference will enable Sun State to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. Sun State may be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this NOV. The request for a conference or other inquiries concerning the NOV should be made in writing to:

David H. Kim (ORC-3)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901
(415) 972-3882

Date

2/7/07


for Deborah Jordan
Director, Air Division
EPA Region 9

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Finding and Notice of Violation was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Edward Forst
President
Sun State Builders, Inc.
1150 W. Washington Street
Tempe, AZ 85281
Certified Return Receipt No. _____

Dated: _____

By: _____

Air Enforcement Office
EPA, Region 9